Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Review of the Emergency Alert System	EB Docket No. 04-296

COMMENTS OF THE CITY OF ANN ARBOR, MICHIGAN

Frederick E. Ellrod III
Marci L. Frischkorn
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue, N.W. #1000
Washington, D.C. 20036-4306
202-785-0600

Counsel for the City of Ann Arbor

October 29, 2004

TABLE OF CONTENTS

SUMMARY

The Emergency Alert System ("EAS") should be preserved and improved for use by local, state, and federal governments to provide the public with timely emergency information.

State and local governments' ability to participate in the federal EAS is an important and necessary part of their public safety efforts. Threats or emergencies in a specific locality are best addressed locally. For example, a local government is in the best position to provide information about a chemical spill at a particular site, locations for shelters in a particular jurisdiction, tornadoes in a specified portion of a county. No federal agency can handle this job.

The City of Ann Arbor has used its LAS to warn residents of dangerous weather conditions 27 times thus far in 2004 alone. It has also used the alert systems to provide information regarding power outages, water supply issues, and chemical spills.

Local governments may use the federally mandated EAS. They may also use a similar but separate system – a local alert system ("LAS") – to disseminate local emergency alerts. Such a separate system can be required by local governments as part of a cable franchise. Any changes in the federal rules should preserve both options. Broadcasters and cable operators should be required to transmit emergency messages from local emergency managers, and use of the EAS should be restricted to governmental entities. Localities must be able to adapt any uniform federal protocols to local needs.

The City supports the use of multiple platforms to disseminate emergency alerts. However, the Commission should ensure that emergency use does not overload these platforms when they are most needed, and consider that local governments may be better positioned to use some methods of disseminating information than for others.

The Commission's Regulatory Flexibility Analysis must take into account the impact on small local governments of any EAS requirements the Commission might adopt.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Review of the Emergency Alert System	EB Docket No. 04-296

COMMENTS OF THE CITY OF ANN ARBOR, MICHIGAN

The Commission's Notice of Proposed Rulemaking in *Review of the Emergency Alert System,* EB Docket No. 04-296, FCC 04-189, released Aug. 12, 2004 ("*NPRM*"), raises broad questions about the future usefulness of the Emergency Alert System ("EAS"). The City of Ann Arbor, Michigan ("City") proposes that the federal EAS as it is currently constituted need not be discarded. Nor should existing state and local access to that system be blocked. Rather, with appropriate changes the EAS can be refashioned into an effective and efficient public warning system that takes advantage of technological advances and responds to the public's need to obtain timely emergency information.

I. STATE AND LOCAL ACCESS TO THE EMERGENCY ALERT SYSTEM REMAINS A VITAL PART OF THE EMERGENCY COMMUNICATIONS INFRASTRUCTURE.

The *NPRM* acknowledges that in the past state and local government participation in the EAS has been "encouraged," but then asks whether, given the permissive nature of the EAS at the state and local level, such a structure is outdated. *NPRM* at ¶ 3. On the contrary, state and local governments' ability to participate in the federal EAS is an important and necessary part of their public safety efforts. Now more than ever, state and local governments need every tool at their disposal to reach their citizens as quickly as possible in times of threat or other

emergencies. Local governments must maintain the ability to use the EAS and, in addition, to require interface equipment and similar systems in cable franchises for public safety purposes.

Threats or emergencies in a specific locality are best addressed locally. While federal agencies are in the best position to monitor national threats – such as the September 11th attacks – states and localities are in the best position to evaluate the regional and local situation, respectively, and assess the information needed to respond to a more localized threat. For example, a local government is in the best position to provide information about a chemical spill at a particular site, locations for shelters in a particular jurisdiction, tornadoes in a specified portion of a county. No federal agency is in the position to do such a job.

Under the current EAS model local government agencies that wish to issue an alert via the EAS transmit that alert via a satellite feed, Emergency Government VHF two-way radio channel or telephone. To generate an EAS message for transmission to broadcasters and cable operators, a local government must use a device called an EAS Encoder, which is connected to the local government's satellite feed, two-way radio or telephone line. Once the message is received by a local broadcaster or cable operator, it automatically triggers the recipient's EAS decoder to deliver the local government's message. If a local government does not have an EAS encoder, it can still utilize the EAS by contacting a designated broadcaster or operator directly.

Local governments also use a similar but separate system to disseminate local emergency alerts. Such a separate system, which is commonly referred to as a local alert system ("LAS"), can be required by local governments as part of a cable franchise. The City, for example, has an LAS that has been operational since 1988. The City's LAS is distinct from the federal EAS in technology, activation authorization, and geographic footprint. The LAS uses relatively simple technology: a text message generator containing a set of standard warning/alert messages (tornado warning, boil water alert, *etc.*) is located at the cable operator headend and is connected

to a telephone interface to receive activation codes. Based on decisions made at the City's Emergency Operations Center, the LAS can be activated by authorized City personnel using a specified telephone number and code number to indicate the type of warning message desired. The activation code triggers a text message to "override" all channels on the cable system serving Ann Arbor and the surrounding townships, and allows the authorized personnel to read a scripted warning/alert message. The activation typically lasts from (15) to (30) seconds, and ends when the authorizing technician enters a "sign off" code. Access to both the EAS and a LAS may be needed, depending on the circumstances.

Local governments have effectively used the federal emergency alert system or local alert systems to transmit emergency alerts. For example, the City has used its LAS to warn residents of the City of dangerous weather conditions such as tornadoes and flooding, as well as other emergencies, such as power outages. The City has used the LAS for weather-related alerts 27 times thus far in 2004 alone. In December 2003 the City also used the system to provide notice to residents that they should boil water before using due to a major water main break that resulted in a road cave-in on Plymouth Road in Ann Arbor.

The LAS was also used on May 11, 2003, when dangerous chemicals were accidentally released at an industrial site in Ypsilanti, near Ann Arbor. The City's LAS serves as a backup to the federal emergency alert system in neighboring Washtenaw County. The federal EAS, however, takes longer to activate than the LAS, because the County must contact a particular individual for clearance; decision-making authority for the EAS is tiered. The City, on the other hand, can activate the LAS at once, and the alert is conveyed over the local cable system to most of the populated part of Washtenaw County, which is served from the Ann Arbor headend. Thus, on May 11, 2003, the County contacted the City to trigger the LAS, and as a result was able to advise residents to shelter in place from 9:00 a.m. to 2:00 p.m.

In fact, the since the federal EAS has been instituted it has most often been employed to disseminate warnings of local, state, and regional emergencies, events or threats rather than national threats or emergencies. *See, e.g., NPRM* ¶ 24 (system has never issued a Presidential alert). The same point is made by the Partnership for Public Warning, which noted that (for example) all of the activations of the EAS from 1983 to 1986 were for local emergencies.[1]

II. FEDERAL RULES WHICH WOULD PREVENT LOCALITIES FROM USING THE EAS COULD CONFLICT WITH STATE LAWS AND IMPAIR LOCAL AGREEMENTS.

The *NPRM* appears to suggest the possibility that the Commission would alter its rules to inhibit state or local use of the EAS. Although no specific rules are proposed in the *NPRM*, and hence it is difficult to make specific suggestions or rebuttals, the general suggestion of such a limitation is of sufficient concern to require comment.

Federal rules preventing localities from using the EAS would conflict with state laws and local or regional plans that require localities to call a local alert under certain conditions. For example, the Michigan Emergency Management Act, Act 390 of 1976 as amended, Mich. Compiled Laws 30.401 *et seq.*, requires that the City promptly disseminate the declaration of a local state of emergency by means calculated to bring the information to the attention of the general public. In addition, the powers of Michigan's governor to declare a state of emergency are also implicated by virtue of the same Act.

Federal rules preventing localities from using the EAS could also conflict with existing local ordinances and impair local agreements. For example, the Ann Arbor Code at Section 2:121(2) provides that:

---

[1] *See The Emergency Alert System (EAS): An Assessment,* at 23, 51 (February 2004) ("PPW EAS Assessment").

> In addition [to the federal EAS], a cable system must allow certain authorized City and County officials to automatically override the audio and video signals of all channels on the cable system and transmit and report emergency information. Such overrides may be by means of (for example) direct telephone call-in by the City's Emergency Management Division or by reception of wireless transmissions from the County Emergency Management Division.[2]

Local governments across the country have adopted similar requirements and/or negotiated similar agreements with their cable operators. In crafting any federal rules regarding the state and local access to the federally mandated EAS, the Commission should be careful not to impair such local ordinances or agreements.

III. ANY CHANGES TO THE EAS RULES SHOULD PROTECT LOCAL ALERT SYSTEMS AS WELL AS STATE AND LOCAL ACCESS TO THE EAS.

As noted above, local communities may use either the federal EAS, or a customized LAS, to issue public information in an emergency. Both of these options should be protected.

A. A Local Government May "Piggyback" Local Alerts On The Federally-Mandated EAS.

The existing rules permit local governments to trigger alerts using the same codes and mechanisms that the federal government uses, but affecting only a local area. This permits local alerts to "piggyback" on the EAS mandated by federal law for a cable system, without large additional costs or complexities. Using the federal EAS may prove to be the most efficient method of disseminating local emergency alerts for certain local governments. However, even if this method is the most efficient for a particular community, that community may still require additional equipment to ensure that the local community can take advantage of the federal system. For example, a local government utilizing this method might need a separate interface to allow the local government to trigger federal codes or messages: a separate telephone number

---

[2] The City's cable franchise agreement with Comcast, at § 7(c), requires the company to

and identification code, or perhaps a connection to a government-only data network through which an alert could be originated. Thus, the Commission's rules must continue to make it possible for local communities to reach specific agreements on such equipment with cable operators or other EAS carriers.

In addition, the Commission seeks comment in the *NPRM* on whether the current "permissive nature of EAS at the state and local level," which has admittedly resulted "in an inconsistent application of EAS as an effective component of overall public alert and warning system," is outdated. *NPRM* ¶ 3. What is needed is for the current system to work more consistently, rather than a reallocation of decision-making authority on fundamental matters of public safety. The Commission in the *NPRM* acknowledges that "the dissemination of emergency information is a critical and fundamental component of broadcaster's local public service obligations." *NPRM* ¶ 24. The Commission should thus adopt rules to require broadcasters and cable operators to transmit emergency messages from local emergency managers.

B. Local Governments Must Continue To Be Able To Require Additional Facilities or Equipment From Cable Operators.

In addition, local communities may need to require or install specialized equipment to carry messages or perform functions not supported by the federal EAS. Section 624 of the Cable Act, 47 U.S.C. § 544(b)(1), (b)(2)(A) (facilities and equipment), permits local governments to require additional facilities or equipment under a cable franchise to expand or adapt the capabilities of a local alert system of this sort. For example, as noted above, the City's LAS works through different equipment and has different output: an LAS device at the headend receives a code from the City's emergency management offices, triggering a preset screen with a text message, plus audio message read into the handset. This approach may best fit the needs of

---

comply with this requirement.

a particular community where different or more varied messages are needed than the federal codes allow for, or where the demographics of the community makes it particularly important to reach hearing- or vision-impaired citizens or the elderly. Thus, any rules must be careful not to impact existing or new franchise requirements for such systems, whether EAS or LAS.

IV. LOCAL COMMUNITIES SHOULD BE FREE TO BUILD ON UNIFORM FEDERAL REQUIREMENTS ACCORDING TO LOCAL NEEDS.

A. Localities Need To Be Able To Adapt Uniform Protocols To Local Needs.

While certain uniform federal standards and controls for the federal system may be helpful as a foundation for local government use, local governments should be able to build on such standards in order to add functionality. For example, local governments should have the ability to direct cable system viewers to a government or public access channel for more detailed information. This would obviously not be a feature of the federal system alone – but a local alert could use the federal mechanism to deliver a message telling citizens where to turn for local information.

As pointed out above, different localities can have different needs regarding not only the types of emergencies but also the means for disseminating information. For example, the City of Atlantic City, New Jersey, because of its geographic location[3] has very little access to broadcast television. Residents in the City thus rely more heavily on cable television than in other communities, making cable television a better channel for disseminating emergency information than broadcast stations.

Local needs also differ depending on commuting patterns in different communities. For example, during the day many residents of other communities surrounding Ann Arbor come in to

---

[3] There appears to be only one commercially licensed broadcaster in New Jersey, and that broadcaster is located in the northern part of the state.

the City to work. The City needs to be able to provide information on emergencies or threats within the City to residents of the surrounding communities before those persons come into the City. This would assist the City in keeping such persons out of danger areas and would generally improve traffic control in the City, helping first responders respond to emergencies more quickly.

It would be difficult or impossible to set uniform federal standards and/or controls for local plans that could take all such differences into account. Yet a failure to take these differences into account could prevent localities from making the best use of the communications media available in *that* location. Thus, any federal standards must allow the flexibility necessary for state and local governments to adapt to local needs the available means of disseminating information.

If the Commission does find it necessary to adopt limited federal standards and controls, the Commission should be careful to ensure that any EAS retains the underlying functionalities required by federal law (*e.g.*, codes for prepackaged messages), so that these functions can continue to be used by local communities.

B. Triggering the EAS Should Be a Governmental Function.

At ¶ 26 of the *NPRM*, the Commission raises the issue of curbing broadcast stations' authority to initiate alerts on their own. Any station can put on its own emergency messages at any time using its own normal transmitting procedures; but the triggering of the EAS should be a governmental function, so that there is no ambiguity about the fact that listeners or viewers are receiving official information when the EAS is activated.

The Commission raises a concern at ¶ 41 of the *NPRM* about possible unauthorized uses of the system by state and local governments. There is no basis in the record, however, to conclude that local governments would misuse their access to the EAS. In fact, as the

Washington DC National Capital Region Emergency Alert System (EAS) Plan demonstrates, local governments recognize the importance of proper use of the EAS. The plan states:

> A WORD OF CAUTION: Emergency Services agencies have acquired a valuable new tool in gaining direct access to all area broadcasters and cable operators via the EAS. However, if not used prudently, you put yourself in danger of losing this tool. Broadcasters and cable operators are expecting the EAS to be used only in life-threatening emergencies. Keep in mind two things. First, some broadcasters and cable operators have their EAS Decoders set on Automatic Mode. There is no one to screen your message and decide if it should be aired. They are depending on you to only send an EAS Alert for a very serious emergency. The first time you trigger the system for a frivolous event, you will lose the confidence of your area broadcasters and cable system operators.

Washington DC National Capital Region Emergency Alert System (EAS) Plan, VIII(B) (Revised August, 2003).

If the Commission concludes that there is some reason to be concerned about possible abuse of the system, the Commission could address these concerns by creating a federal protocol for activating the EAS with strong security procedures and a federal standard requiring a community to clearly designate who has authority to activate the system. Finally, the Commission could consider implementing reporting along the lines recommended by the Partnership for Public Warning at page 30 of the PPW EAS Assessment, so as to monitor uses of the system.

V. THE COMMISSION SHOULD CONSIDER NEW ROUTES FOR EMERGENCY INFORMATION MADE AVAILABLE BY NEW TECHNOLOGIES.

In this "always connected" world, the NPRM properly raises the question of expanding emergency systems to consider the possibilities inherent in multiple platforms: *e.g.*, cell phones (including text messages), PDAs, satellite, Internet e-mail or instant messaging. *NPRM* at ¶ 24.

For example, both Washington, D.C., and Arlington County, Virginia, currently have systems for sending emergency alerts via text messaging.[4]

While use of multiple platforms to disseminate emergency alerts appears to be desirable, any EAS model that incorporates multiple platforms should also include proper mechanisms or controls to ensure that emergency use does not overload these media just when they are most needed. For example, on September 11, 2001, the volume of Internet traffic made it difficult for individuals to contact each other via e-mail; introducing an additional stream of emergency messages addressed to sizable populations could place further stress on the system.

Moreover, local governments may be better positioned to use some methods of disseminating information than for others. For example, a local government might be able to use a franchised cable system to deliver alerts targeted to its own jurisdiction. It might be impractical to do the same by satellite, unless a city or county is of a size and shape that would allow a satellite spot beam to be narrowed to that community. And the ability to use Internet messages to target a community as a practical matter might depend on whether the community had already amassed a set of URL addresses whose owners had signed up to receive emergency data, or could otherwise identify members of its own community (since URLs are not location-specific).

VI. THE NPRM FAILS TO ADRESS THE IMPACT ANY CHANGES TO THE CURRENT EAS MODEL MIGHT HAVE ON SMALL LOCAL GOVERNMENTS.

The Commission's Initial Regulatory Flexibility Analysis ("IRFA") at ¶ 4 correctly indicates that "small governmental jurisdictions" are one class of small entities that will be

---

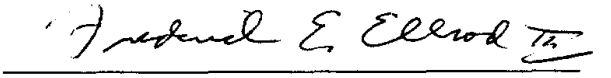
[4] *See* http://www.alert.dc.gov/eia/site/default.asp, under "Receive Emergency Alerts;" Arlington Alert System at http://www.arlingtonalert.com/.

affected by any proposed rules. For example, extensive federal conditions related to EAS use might impose financial burdens on small local governments. However, there is nothing in the IRFA that addresses the impact on local governments of any EAS requirements the Commission might adopt. *See NPRM,* Appendix A, ¶¶ 5-15. Nor does the IRFA address the impact on local governments of a new EAS model which would exclude local government participation; for example, preventing small communities from using the EAS might force them to incur additional costs to install local alert systems of their own. It is difficult to be more specific without actual proposed rules on which to comment. Nonetheless, the IRFA will be incomplete if it does not address the impact of proposed rules on small local governments.

VII. CONCLUSION

For the above reasons, changes in the EAS rules should respect the role of state and local governments in emergency management and public information.

Respectfully submitted,



Frederick E. Ellrod III
Marci L. Frischkorn
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue, N.W. #1000
Washington, D.C. 20036-4306
202-785-0600

Counsel for the City of Ann Arbor

October 29, 2004

4085\06\00104971.DOC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Review of the Emergency Alert System	EB Docket No. 04-296

DECLARATION OF HARRY S. HAASCH IN SUPPORT OF COMMENTS OF THE CITY OF ANN ARBOR, MICHIGAN

I, HARRY S. HAASCH , declare as follows:

1. I submit this declaration in support of the Comments of the City of Ann Arbor, Michigan in the above-captioned proceeding.

2. I have been Cable Administrator for the City of Ann Arbor, Michigan (the "City"), since 1991.

3. The City of Ann Arbor currently has a Local Alert System ("LAS").

4. My responsibilities as Cable Administrator include monitoring the LAS and its testing.

5. As Cable Administrator, I was also instrumental in negotiating the City's current cable franchise, which incorporates provisions requiring both the federal Emergency Alert System and the LAS.

6. The LAS is a feature of the City's cable system that has been operational at least since 1988.

7. The LAS is distinct from the Emergency Alert System in technology, activation authorization, and geographic footprint.

8. The LAS uses relatively simple technology: a text message generator containing a set of standard warning/alert messages (such as tornado warning, boil water alert) is located at the cable system headend and is connected to a telephone interface to receive activation codes.

9. Based on decisions made at the City's Emergency Operations Center, the LAS can be activated by authorized City personnel using a specified telephone number and code number to indicate the type of warning message desired. The activation code triggers a text message to override all channels on the cable system serving Ann Arbor and the surrounding townships, and allows the authorized personnel to read a scripted warning/alert message. The activation typically lasts from (15) to (30) seconds, and ends when the authorizing person enters a "sign off" code.

10. The LAS reaches every cable television subscriber served from the Comcast Ann Arbor system. While not every household subscribes to Comcast Cable, the potential reach of the LAS is approximately 80,723 residents in the County.

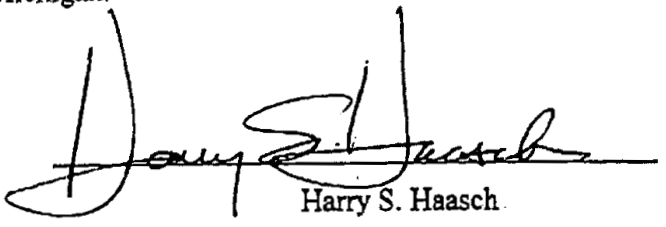
11. The City's LAS serves as a backup to Washtenaw County's Emergency Alert System (EAS), and the County's system is a backup for the City.

12. The City has issued approximately 27 weather alerts over the LAS in 2004 alone.

13. In addition, the City activated the LAS during a power outage on August 14, 2003. Using the LAS was very helpful because some of the outlying areas in the county still had power.

Verification

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on October 29, 2004 in Ann Arbor, Michigan.



Harry S. Haasch

4085\06\00105050.DOC